

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence and for preliminary hearing purposes, the Board finds the Order of the Administrative Law Judge should be affirmed.

The majority of the issues raised by claimant, including the Administrative Law Judge's denial of medical treatment with Michael T. McCoy, M.D., and Connie Lang, D.C., and the denial of temporary total disability compensation, as well as the determination that respondent has the right to designate the treating physician within ten days of the date of order, are issues over which the Board does not have jurisdiction on an appeal from a preliminary hearing.¹ Claimant's appeal of those issues is, therefore, dismissed.

The only issue determined by the Administrative Law Judge which could potentially be appealable is the issue regarding whether the injury to claimant's knees from the March 15, 2001 injury, in Docket No. 265,249, aggravated claimant's preexisting arthritic condition. As noted by the Administrative Law Judge in the January 14, 2004 preliminary hearing transcript, the only evidence in the record which is new since the May 29, 2002 original preliminary hearing is the medical information from Dr. McCoy. Dr. McCoy, in his June 12, 2002 letter, discusses claimant's knee condition, finding that claimant did aggravate her preexisting arthritic condition as a result of the March 15, 2001 injury. However, in his August 12, 2002, letter, Dr. McCoy opines that claimant suffered no permanent partial disability from that original injury. Therefore, as noted by the Administrative Law Judge, this appears to be in conflict with claimant's allegation that claimant needs ongoing medical treatment for her knees as a result of the March 15, 2001 injury.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.² In this instance, the Board finds that the medical evidence is not sufficient to persuade the Board to modify its earlier decision of August 21, 2002, that claimant has failed to prove that her ongoing arthritic knee problems are related, in some fashion, to the March 15, 2001 injury to her right calf. The Board, therefore, finds the Order by the Administrative Law Judge on that issue should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated January 16, 2004, is affirmed and remains in full force and effect.

¹ K.S.A. 44-534a and K.S.A. 44-551.

² K.S.A. 44-501 and K.S.A. 44-508(g).

IT IS SO ORDERED.

Dated this ____ day of April 2004.

BOARD MEMBER

c: Steven M. Tilton, Attorney for Claimant
Patrick M. Salsbury, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director